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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FILE: [REDACTED] Office: Newark

Date:

MAR 13 2001

IN RE: Obligor: [REDACTED]
Bonded Alien: [REDACTED]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the
Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR:

[REDACTED]

**Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Newark, New Jersey, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on July 9, 1999 the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 25, 2000 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (the Service) for hearing at 8:30 a.m. on March 23, 2000 at 970 Broad Street, Room 1135, Newark, NJ 07102. The obligor failed to present the alien, and the alien failed to appear as required. On April 25, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the district director erred in breaching the bond because: (1) he did not notify the obligor of all hearings in the alien's case, and (2) he sent the alien notice to appear for removal (Form I-166), contrary to Service regulations.

On appeal, counsel requests an additional 60 days in which to file a written brief after the receipt of the alien's file pursuant to the filing of a Freedom of Information Act (FOIA) request and states that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the Associate Commissioner by the obligor on previous appeals but to a myriad of similar cases adjudicated by the Associate Commissioner since the inception of the Office of Administrative Appeals in 1983. Therefore, the request is denied.

The present record fails to contain evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

Although the obligor failed to produce the alien as required by the surrender demand, counsel stated on appeal that all the conditions imposed by the terms of the bond were substantially performed by the obligor. The regulations provide that an obligor shall be released from liability where there has been "substantial

performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form I-352 listed [REDACTED], Houston, TX 77002 as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED], Houston, TX 77002 on February 25, 2000. This notice demanded that the obligor produce the bonded alien for hearing on March 23, 2000. The receipt also indicates the obligor received notice to produce the bonded alien on March 3, 2000. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal. The bond agreement is silent as to any requirement compelling the Service to notify the obligor of all bond-related matters, despite counsel's assertion to the contrary. Similarly, neither the statute, the regulations, nor administrative case law provide support for counsel's allegation that the Service is required to notify the obligor of all bond-related matters.

Counsel states that the obligor has been relieved from liability on the bond because the Service sent the alien a notice to appear for removal on Form I-166. Counsel asserts that this is contrary to current Service regulations.

Form I-166 has not been required since July 25, 1986 which is the effective date of an amendment to former 8 C.F.R. 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request.

In the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, the Service agreed that a Form I-166 letter would not be mailed to the alien's last known address before, and not less than 3 days after, the demand to produce the alien is mailed to the obligor.

Contained in the record is a certified mail receipt which indicates that the Form I-166 letter was sent to the alien's last known address on April 25, 2000. This notice stated that arrangements have been made for the alien's departure to Honduras on May 24, 2000. Consequently, the record clearly establishes that the Form I-166 letter was mailed approximately 3 months after the notice to surrender was mailed.

Pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, the Service agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340. A properly completed questionnaire must include a copy of any picture of the alien found in the Service file.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained. The district director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.